IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No. 2770 of 2006

For Approval and Signature:

HONOURABLE MR.JUSTICE AKIL KURESHI

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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PATEL CHANDRIKABEN RAMABHAI WD/O RAMABAHI MANGALBHAI - Petitioner(s)
Versus
PATEL DINESHKUMAR TRIBHOVANDAS - Respondent(s)

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Appearance :
HL PATEL ADVOCATES for Petitioner(s) : 1,
RULE SERVED BY DS for Respondent(s) : 1,

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CORAM : HONOURABLE MR.JUSTICE AKIL KURESHI

Date : 23/03/2007

ORAL JUDGMENT

1. In this petition, the petitioner has challenged an order dated 30th September, 2005 passed by the

Principal Senior Civil Judge, Vijapur, below exh,30 in Special Civil Suit No. 19/2004.

2. The petitioner had filed the above mentioned suit seeking recovery of Rs.1,80,000/- from the defendant i.e. respondent herein. It is the case of the petitioner that her husband had loaned a sum of Rs. 1,80,000/- to the respondent for his business. To repay the said sum, the respondent had issued cheque dated 20th August, 2003. On 23rd July, 2003, however, suddenly the husband of the petitioner expired. On 20th August, 2003, she deposited the said cheque in the joint account of her husband and her mother-in-law. The amount however, was not released. The petitioner therefore, filed the above-mentioned civil suit seeking recovery of the money. On 10th August, 2005, the petitioner filed an application seeking amendment of the cause title to describe that the suit is filed as heir of Ramabhai Mangalbhai. This amendment application was turned down by the learned Judge by the impugned order observing that the issues were framed and part of the evidence was recorded and as the trial has already commenced, it would not be possible to grant amendment.

3. I am afraid the learned Judge committed an error in rejecting the application. The only prayer made by the petitioner was to amend the cause title to describe herself as heir of the deceased

Ramabhai Mangalbhai instead of in the personal capacity . Ordinarily, Courts liberally grant amendment applications, unless it is found that same would cause prejudice to the opponent which cannot be compensated in terms of money.

4. With respect to the question that suit had already commenced, the Apex Court in the case of Baldev Singh and others v. Manohar Singh and another reported in (2006) 6 Supreme Court Cases 498 made following observations :

"17. Before we part with this order, we may also notice that proviso to Order 6 Rule 17 CPC provides that amendment of pleadings shall not be allowed when the trial of the suit has already commenced. For this reason, we have examined the records and find that, in fact, the trial has not yet commenced. It appears from the records that the parties have yet to file their documentary evidence in the suit. From the record,it also appears that the suit was not on the verge of conclusion as found by the High Court and the trial Court. That apart, commencement of trail as used in proviso to Order 6 Rule 17 in the Code of Civil Procedure must be understood in the limited sense as meaning the final hearing of the suit, examination of witnesses, filing of documents and addressing of arguments. As noted hereinbefore, parties are yet to file their documents, we do not find any reason to reject the application for amendment of the written statement in view of proviso to Order 6 Rule 17 CPC which confers wide power and unfettered discretion to the court to allow an amendment of the written statement at any stage of the proceedings."

5. Considering the above observations, I do not find that the trial Court should have rejected the request for amendment of the plaint only on the

ground that the suit had commenced.

6. Under the circumstances impugned order dated 30th September, 2005 is quashed. The amendment prayed for by the petitioner original plaintiff is allowed.

7. The petition is allowed and disposed of accordingly. Rule is made absolute. No order as to costs.
DS permitted.

(Akil Kureshi,J.)

(raghu)